

financial data before them in order to prepare well reasoned analyses and arguments. We are not persuaded this can be accomplished by release of only a portion of the annual reports as suggested by Studio. We must assume Studio has decided that by placing its financial condition in issue, it has decided that any possible competitive harm it could expect from the release of this information is outweighed by the benefits it may gain by participating in this proceeding.

Id. at 417, citing National Parks and Conservation Association v. Morton, 498 F.2d 795 (D.C. Cir. 1974). The same analysis applies here. MSCI itself has placed the allegedly confidential information into issue in its quest for a valuable Commission grant. In doing so, MSCI, like the applicant in Amaturo, can make its own decision whether its improved prospects for receiving a Pioneer's Preference outweigh the harm that could result from disclosure.

Whatever vestigial privacy interest MSCI may retain after voluntarily placing its allegedly proprietary information at issue, that privacy interest is secondary to the public interest in open proceedings. In ITT World Communications, Inc., 49 RR 2d 437 (1981), the Commission rejected ITT's request for nondisclosure of asserted trade secrets filed in support of a tariff. Noting that ITT has an obligation to justify its tariffs (much as MSCI must justify its own Pioneer's Preference request) the Commission wrote:

ITT's privacy interest does not override the overwhelming public interest in favor of open tariff proceedings, particularly where as here, our own independent analysis of the subject information does not suggest that confidential treatment is warranted.... The Commission must evaluate the lawfulness of the proposed [tariff] revisions, taking into account any challenges by members of the public; the Commission must then issue a public order based on a public record that could be scrutinized by outside parties and a reviewing court.

Id. at 440-41.

Thus, when a petitioner seeking a Pioneer's Preference voluntarily submits allegedly confidential material in support of its request, the balance of interests must tip

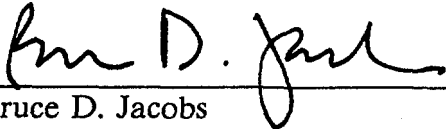
in favor of allowing free and unfettered access to the information, both by competing parties and members of the public.

Conclusion

Based on the foregoing, AMSC Subsidiary Corporation respectfully requests that the Commission reverse the decision to issue the Protective Order and instead either make the MSCI material available unconditionally or refuse to consider it altogether in this proceeding.

Respectfully submitted,

**AMSC SUBSIDIARY CORPORATION**



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Glenn S. Richards  
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Dated: June 12, 1992

**EXHIBIT A**

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

MAY 04 1992

MAY - 6 1992

IN REPLY REFER TO:

CN92-88

Norman P. Leventhal, Esq.  
Leventhal, Senter & Lerman  
2000 K Street, N.W.  
Suite 600  
Washington, DC 20006

Re: Freedom of Information Act Request on Behalf of  
TRW, Inc.

Dear Mr. Leventhal:

This responds to your request made pursuant to the Freedom of Information Act for materials submitted to the Commission on April 10, 1992, by Motorola Satellite Communications, Inc. and described in Motorola's request for confidential treatment submitted on the same date. In addition, you have requested copies of any intra-agency communications concerning this material. You are advised that the Chief Engineer has delegated to me responsibility for responding to your request and that I have reviewed the materials in question.

The materials concern Motorola's IRIDIUM system and consist of:

1. A printed "Confidential Appendix" containing, at tab A, documents concerning patent applications, and at tab B, documents concerning preliminary results of experiments and field tests;
2. A computer diskette containing software that Motorola describes as simulating operation of inter-satellite links; and
3. A videotape of a voice simulation.

I have determined that pursuant to Section 0.457(d) of the Commission's rules, the information contained in the printed "Confidential Appendix," except for that contained at tab A-7; the information contained on the videotape; and the information contained on the diskette if it is as described<sup>1</sup> constitute trade secrets and commercial information and therefore are exempt from disclosure pursuant to Exemption 4 of the Freedom of Information Act.

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<sup>1</sup>The information on diskette submitted by Motorola is labeled as working on an Apple Macintosh computer. Attempts to access this information were unsuccessful, and therefore I have not reviewed this material.

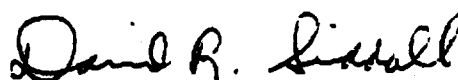
The information contained at tab A-7 appears to be material already in the public domain to which confidentiality cannot attach, and therefore it will be made available. There are no intra-agency communications concerning the Motorola request.

Please be advised that pursuant to Section 0.461(h)(2) of the Commission's rules, since the request for the records for which confidentiality has been requested is granted in part and denied in part, both the party that submitted the records to the Commission, and the party that filed the request for inspection of those records may file an application for review within 10 working days from the date of this letter. In the interim, no materials will be released.

Given this determination that the materials are exempt in part, from disclosure, Motorola may pursue several options in this matter. If Motorola wishes the Commission to consider these materials when reaching a decision in the matter of a pioneer's preference in Docket No. 92-28, Motorola may withdraw its request for confidentiality and have the materials placed in the public record. Alternatively, the Commission is willing to issue a protective order, specifying that only Commission personnel and specified individuals in this proceeding will have access to the materials and that the materials may not be used for any purpose outside the FCC proceedings. If Motorola determines that it does not wish to pursue either of these options, the materials deemed confidential will not be considered by the Commission. If the Commission is so notified, the exempt materials will be returned to Motorola after all appeal rights in all Freedom of Information Act requests have expired. In the event these materials are returned to Motorola, I, as the only Commission employee to have examined the materials, will recuse myself from acting in any decision-making capacity in the Commission's deliberations on the pioneer's preference requests associated with ET Docket No. 92-28.

Through its receipt of a copy of this letter, Motorola is hereby notified that it should inform the undersigned, and serve all parties, within 5 days concerning which of the above alternatives it intends to pursue.

Sincerely,



David R. Siddall, Chief  
Frequency Allocation Branch

cc: Motorola Satellite Communications, Inc.



# STEPTOE & JOHNSON

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PHILIP L. MALET  
(202) 429-6239

## VIA HAND DELIVERY

May 11, 1992

David R. Siddall, Chief  
Frequency Allocation Branch  
Office of Engineering and Technology  
Federal Communications Commission  
Room 7102  
2025 M Street, N.W.  
Washington, D.C. 20554

Re: Freedom of Information Act Requests on Behalf  
of TRW, Inc. (CN92-88), Ellipsat Corp. (CN92-83),  
and Constellation Communications, Inc. (CN92-86)  
(File No. PP-32; ET Docket No. 92-28)

Dear Mr. Siddall:

I am in receipt of your letters to counsel for TRW, Inc. ("TRW"), Ellipsat Corporation ("Ellipsat") and Constellation Communications, Inc. ("CCI") responding to their Freedom of Information Act ("FOIA") requests relating to the materials submitted by Motorola Satellite Communications, Inc. ("Motorola") in a Confidential Appendix in support of its pioneer's preference request in ET Docket No. 92-28.

You have requested a response from Motorola concerning which of the alternatives outlined in your letters Motorola intends to pursue with respect to the possible return or disclosure of the materials contained in its Confidential Appendix. For the most part, Motorola is prepared to release these materials subject to a suitable Protective Order being entered by the Commission limiting access to this information only to Commission personnel and "specified individuals" of parties to the pioneer's preference proceeding. Some of this material must be redacted before any disclosure can be made in order to protect Motorola's confidences, commercial information and trade secrets. It is my understanding that once a suitable Protective Order is entered into, these materials could be used by the Commission in deciding whether to grant Motorola a

David R. Siddall  
May 11, 1992  
Page 2

pioneer's preference for the innovations contained in the IRIDIUM<sup>™</sup> system. A limited amount of these materials, however, must be returned to Motorola without any further disclosure due to the highly sensitive nature of the information.

The following sets forth Motorola's position with respect to each item contained in the Confidential Appendix:

Tab A      Patent Materials Relating to the IRIDIUM<sup>™</sup> System Design

(A1)      Satellite Cellular Telephone and Data Communications System

All of this material may be released (subject to minor redactions) pursuant to the entry of a suitable Protective Order. Six foreign patents have already been issued on this case.

(A2)      Position Aided Subscriber Unit for a Satellite Cellular System

All of this material may be released (subject to minor redactions) pursuant to the entry of a suitable Protective Order. This patent has been allowed in the United States and Motorola expects the issuance of a patent shortly.

A3      Power Management System for a Worldwide Multiple Satellite Communications System

This material must not be released and Motorola requests that it be returned in its entirety.

(A4)      Telemetry, Tracking and Control for Satellite Cellular Communication Systems

All of this material may be released (subject to minor redactions) pursuant to the entry of a suitable Protective Order. This patent has been allowed in the United States and Motorola expects the issuance of a patent shortly.

(A5)      Method of Predicting Cell-to-Cell Hand-Offs for a Satellite Cellular Communications System

All of this material may be released (subject to minor redactions) pursuant to the entry of a



suitable Protective Order. This patent has been allowed in the United States and Motorola expects the issuance of a patent shortly.

**A6** Eleven Abstracts of Disclosure and Accompanying Diagrams

Only the titles of these patent applications may be released at this time. All other materials must be returned to Motorola.

**A7** Papers relating to Chinese patent application (English translations)

All of this material may be released and placed in the public record.

**Tab B** Preliminary Results of Propagation Experiments

**B1** L-Band Propagation Data Collection

Most of this material may be released pursuant to a suitable Protective Order with the exception of the following pages which must be returned to Motorola:

"Propagation Data Summary and Performance Projection" (fourth page)

"Signal Attenuation (in dB) with a User Inside a Vehicle" (eighth and ninth pages)

**B2** Propagation Measurement Antenna Characterization

Only the first four pages may be released pursuant to a suitable Protective Order. The remaining portions must be returned to Motorola.

**B3** The Affect of Multipath Propagation in the IRIDIUM™ System

Only the first three pages may be released pursuant to a suitable Protective Order. The remaining portions must be returned to Motorola.

**Tab C**

Computer Program of Satellite Link Simulation

David R. Siddall  
May 11, 1992  
Page 4

Motorola is prepared to substitute a videotape of the operation of this computer program in lieu of the computer diskette, and place this videotape in the public record. The actual computer program contains commercial information and is a trade secret of Motorola, and must be returned to Motorola pursuant to Section 0.459(e) of the Commission's Rules.

Tab D

Videotape of Land Mobile Simulation of IRIDIUM<sup>™</sup> System

Motorola is prepared to make this videotape available to other parties to this proceeding pursuant to the entry of a suitable Protective Order.

Please advise me as to the specific provisions contemplated for the Protective Order. I also can make arrangements for the submission of redacted copies of the materials to be disclosed to other parties to the pioneer's preference proceeding.

Thank you for your prompt attention to this matter. I look forward to hearing from you in the near future. By copy of this letter, I am serving those persons listed on the attached Service List with Motorola's response to your letters of May 4, 1992.

Respectfully submitted,



Philip L. Malet

Counsel for Motorola Satellite  
Communications, Inc.

cc: Counsel of Record (Attached Service List)

CERTIFICATE OF SERVICE

I, Philip L. Malet, hereby certify that the copies of the foregoing letter were served by first-class mail, postage prepaid, this 11th day of May, 1992, on the following persons:

- \* Chairman Alfred C. Sikes  
Federal Communications Commission  
Room 814  
1919 M Street, N.W.  
Washington, D.C. 20554
- \* Commissioner James H. Quello  
Federal Communications Commission  
Room 802  
1919 M Street, N.W.  
Washington, D.C. 20554
- \* Commissioner Sherrie P. Marshall  
Federal Communications Commission  
Room 826  
1919 M Street, N.W.  
Washington, D.C. 20554
- \* Commissioner Andrew C. Barrett  
Federal Communications Commission  
Room 844  
1919 M Street, N.W.  
Washington, D.C. 20554
- \* Commissioner Ervin S. Duggan  
Federal Communications Commission  
Room 832  
1919 M Street, N.W.  
Washington, D.C. 20554
- \* Thomas P. Stanley  
Chief Engineer  
Federal Communications Commission  
2025 M Street, N.W.  
Room 7002  
Washington, D.C. 20554

- \* Raymond LaForge  
Federal Communications Commission  
Room 7334  
2025 M Street, N.W.  
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- \* Cheryl Tritt  
Chief, Common Carrier Bureau  
Federal Communications Commission  
Room 500  
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- \* Wendell R. Harris  
Assistant Bureau Chief  
Common Carrier Bureau  
Federal Communications Commission  
Room 6010  
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- \* Cecily C. Holiday  
Chief, Satellite Radio Branch  
Federal Communications Commission  
Room 6324  
2025 M Street, N.W.  
Washington, D.C. 20554
- \* James R. Keegan  
Chief, Domestic Facilities Division  
Common Carrier Bureau  
Federal Communications Commission  
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- \* Thomas Tycz  
Deputy Chief  
Domestic Facilities Division  
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- \* Fern J. Jarmulnek  
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HA-562  
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Greg Daffner  
Craig Moll  
NTIA  
Department of Commerce  
14th & Constitution Ave., NW  
Washington, DC 20230



---

Philip L. Malet

\* By Hand



Before the  
Federal Communications Commission  
Washington, D. C. 20554

DA 92-674

In the Matter of )

)  
) Ellipsat Corp.;  
) TRW Inc.;  
) Constellation Communications,  
) Inc.  
)

FOIA Control No. 92-83  
92-88, 92-86

)  
) On Request for Inspection  
) of Records  
)

Adopted: May 28, 1992  
Released: May 28, 1992

## PROTECTIVE ORDER

By the Chief Engineer:

It is ordered:

1. For purposes of this Order, "Confidential Information" shall mean and include trade secrets and commercial or financial information which is privileged or confidential under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552 (b)(4).

2. Confidential information submitted herein by Motorola Satellite Communications, Inc. ("Motorola") shall be segregated from all material filed and deemed non-confidential as generally set forth in the Letters of David R. Siddall, Chief of the Frequency Allocation Branch, Office of Engineering and Technology, Federal Communications Commission, dated May 4, 1992, to Ellipsat Corp., TRW Inc., and Constellation Communications, Inc. Confidential information, as redacted, shall consist of:

a. the printed "Confidential Appendix," tab A1, A2, A4, A5, A6 (only the titles of the patent applications), B1 (except pages 4, 8, and 9), B2 (only pages 1-4), B3 (only pages 1-3) and

b. videotape demonstration of computer program, in lieu of submitted software;



c. tab D - the information contained on videotape.

3. Confidential information may be disclosed:

a. to counsel for American Mobile Satellite Corp.; TRW Inc.; Ellipsat Corporation; LQSS; Constellation Communications, Inc., and Motorola (the "Applicants") and their associated attorneys, paralegals and clerical staff predicated on a "need to know" basis.

b. to specified persons, including employees of the Applicants, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in connection with ET Docket No. 92-28, PP-32.

4. Counsel may request the Commission to provide one copy of Confidential Information (for which counsel must, as a prerequisite, acknowledge receipt pursuant to this Order), and counsel may thereafter make no more than four additional copies but only to the extent required and solely for the preparation and use in this proceeding, and provided further, that all such copies shall remain in the care and control of counsel at all times. Following the filing of Reply Comments on June 12, 1992, counsel shall retain custody of the Confidential Information until such time as it is necessary to prepare additional filings in connection with ET Docket No. 92-28 in the discretion of counsel. If such additional filings are necessary, counsel shall retain custody of the Confidential Information following submission of such additional filings. Counsel shall return to the Commission within forty-eight hours after the final resolution of ET Docket No. 92-28 all Confidential Information originally provided by the Commission as well as all copies made, and shall certify that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel may retain copies of pleadings submitted on behalf of clients.

5. Confidential Information shall not be used by any person granted access under this Order for any purpose, other than for use in this proceeding and shall not be used for competitive business purposes or otherwise disclosed by such persons to any other person except in accordance with this Order. This shall not preclude the use of any material or information in the public domain or which has been developed independently by any other person.

6. a. Counsel inspecting or copying Confidential Information shall apply for access to the materials covered by this Order

under and by use of the "Attorney Application For Access To Materials Under Protective Order" appended to this Order.

b. Counsel may disclose Confidential Information to persons to whom disclosure is permitted under the terms of this Order only after advising such persons of the terms and obligations of this Order.

c. Counsel shall provide to the FCC and, in the absence of a need for confidentiality, to Motorola the name and affiliation of each person other than counsel to whom disclosure is made or to whom actual physical control over the documents is provided. To the extent that anyone's name is not disclosed to Motorola, that fact shall be disclosed to the FCC and Motorola.

7. Applicants may in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. any portions of the pleadings that contain or disclose Confidential Information are physically segregated from the remainder of the pleading;

b. the portions containing or disclosing Confidential Information are covered by a separate letter referencing this Protective Order;

c. each page of any Applicant's filing that contains or discloses Confidential Information subject to this Order is clearly marked "confidential information included pursuant to Protective Order, DA 92-674;"

d. the confidential portion of the pleading shall be served upon the Secretary of the Commission, Motorola and the other Applicants and not placed in the Commission's Public File, unless the Commission directs otherwise. The Applicants may provide courtesy copies to the Legal Advisor to the Chief Engineer, who will distribute the copies to the appropriate Commission personnel.

8. Disclosure of materials described herein shall not be deemed a waiver by Motorola in any other proceeding, judicial or otherwise, of any privilege or entitlement to confidential treatment of such Confidential Information. Inspecting parties, by viewing said documents: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceedings; and (c) agree that accidental disclosure of privileged information shall not be deemed a waiver of the privilege.

9. The entry of this Order is without prejudice to the rights of Motorola to apply for additional or different protection where it is deemed necessary or to the rights of the Applicants to request further or renewed disclosure of Confidential Information.

10. This Order is issued under Section 0.241 of the Commission's Rules, 47 C.F.R. § 0.241, and is effective on its release date.

*Thomas P. Stanley*

Thomas P. Stanley  
Chief Engineer



Affidavit of William Garner

I declare under penalty of perjury that the following is true and correct:

1. I am Chief Scientist of American Mobile Satellite Corporation ("AMSC") and its wholly-owned subsidiary, AMSC Subsidiary Corporation. I have held this position since 1988, when AMSC was first established. I have worked in the communications industry since 1960. From 1984 to 1988, I was at Hughes Network Systems where I was Assistant Vice President of Applications and Systems Engineering. From 1973 to 1984, I was at American Satellite Corporation, rising to the position of Assistant Vice President and Chief Scientist for Systems Engineering. I hold a BSEE from Texas A&M University.

2. In my capacity as Chief Scientist, I supervise AMSC's development of system architecture and technology and the provision of technical support for the company's filings at the Federal Communications Commission.

3. I have reviewed the descriptions that Motorola Satellite Communications, Inc. has submitted to the FCC of the materials for which it seeks to limit access. Based on these descriptions, it appears that there are likely to be elements of the information contained in the materials that are similar to or related to information that AMSC has or is developing on its own. For example, MSC's "Preliminary Results of Propagation Experiments" apparently includes measured and simulated data that could parallel propagation developments at AMSC. The same

concern applies to data presumably contained in MSCl's satellite link simulation and land mobile simulation materials. The descriptions of the patent materials are so broad that they easily could contain information that parallels AMSC's efforts. For instance, there could be a wide variety of information about modulation and signalling schemes and network design in the patent materials entitled "Satellite Cellular Telephone and Data Communications System" or "Eleven Abstracts of Disclosure and Accompanying Diagrams." Other patent materials have titles that are only slightly more specific, such as "Position Aided Subscriber Unit for a Satellite Cellular System," "Power Management System for a Worldwide Multiple Satellite Communications System" and "Method of Predicting Cell-to-Cell Hand-offs for a Satellite Cellular Communications System." Since AMSC is developing technology in all of these areas, involving position-aided mobile units, power management and call hand-offs, there is likely to be at least some overlap between the MSCl materials and AMSC's own efforts.

4. There are no staff engineers in AMSC's employ or any technical consultants available to work for AMSC who are qualified to review the MSCl materials for the purpose of preparing comments for the FCC that are not also either already involved in technology development for AMSC or likely to be so involved in the future.

  
\_\_\_\_\_  
William Garner

Date: June 12, 1992

CERTIFICATE OF SERVICE

I, Jacqueline L. Mateo, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, hereby certify that true copies of the foregoing "Application for Review of Protective Order" were sent this 12th day of June 1992, by first class United States mail, postage prepaid, to the following:

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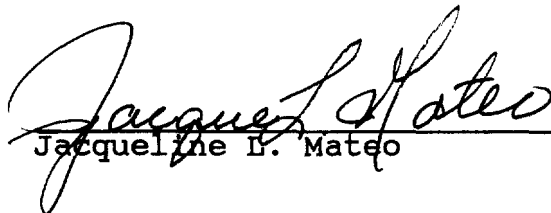
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Jacqueline L. Mateo